

IT 08-3

Tax Type: Income Tax

Issue: Amnesty Eligibility

**STATE OF ILLINOIS
ILLINOIS DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

v.

**ABC TRANSPORTATION
SERVICES, INC.,
Taxpayer**

**No. 07-IT-0000
FEIN 00-0000000
Tax Year 1997**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Ralph Bassett on behalf of the Illinois Department of Revenue; Fred Marcus of Horwood Marcus & Berk Chtd. on behalf of ABC Transportation Services, Inc.

Synopsis:

This matter is before this administrative tribunal as the result of a timely protest by ABC Transportation Services, Inc. ("ABC" or "taxpayer") of the Illinois Department of Revenue's denial of taxpayer's claim for refund for the tax year ending December 31, 1997. The issue presented is whether the taxpayer is entitled to recover overpayments made in connection with the taxpayer's participation in the tax amnesty program authorized by the Illinois legislature in 2003. In lieu of a hearing, the parties have submitted a stipulated record, which includes a written stipulation of facts and documents

the parties agree would be admissible at hearing. Following a review of the documents of record, it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:

1. ABC and its affiliates are engaged in the transportation business throughout the United States, including Illinois. Stipulation of Facts (“Stip.”) ¶1.
2. ABC and its transportation affiliates are engaged in a unitary business operation. Stip. ¶2.
3. ABC and its unitary affiliates timely filed its original combined Illinois corporate income and replacement tax returns for the tax year ending December 31, 1997 (“Original Return”). Stip. ¶3.
4. ABC was named as the unitary business group filer or “UB Filer” on the Original Return. Stip. ¶4.
5. Stipulation of Facts Exhibit A is a true, genuine and accurate copy ABC's Original Return. Stip. ¶5.
6. Illinois adopted a tax amnesty program, effective June 20, 2003. Stip. ¶6.
7. Illinois’ tax amnesty program covered taxable periods ending after June 30, 1983 and before July 1, 2002. Stip. ¶7.
8. Taxpayers seeking to participate in Illinois’ tax amnesty program were required to do so by November 17, 2003. Stip. ¶8.
9. Prior to the commencement of Illinois’ tax amnesty program, the Internal Revenue Service (“IRS”) had commenced an audit of ABC and its affiliates. Stip. ¶9.
10. As of November 17, 2003, the IRS had not yet completed its audit of ABC and its affiliates. Stip. ¶10.
11. On November 17, 2003, ABC participated in the amnesty program by filing an amended combined Illinois corporate income and replacement tax return for the tax year (“Amended Return”). Stip. ¶11.
12. Stipulation of Facts Exhibit B is a true, genuine and accurate copy of ABC's Amended Return. Stip. ¶12.

13. ABC filed its Amended Return to report what it anticipated would be Federal audit changes even though the Federal audit had not yet been completed. Stip. ¶13.
14. On its Amended Return, ABC determined that additional Illinois income and replacement tax in the amount of \$100,670 would be due as a result of the anticipated Federal audit changes. Stip. ¶14.
15. ABC paid \$100,670 of additional corporate income and replacement tax with its Amended Return. Stip. ¶15.
16. The IRS's audit adjustments for the tax year were finalized on August 18, 2004 when ABC executed Federal form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overpayment ("Federal Waiver"). Stip. ¶16.
17. Stipulation of Facts Exhibit C is a true, genuine and accurate copy of the Federal Waiver executed by ABC. Stip. ¶17.
18. During the month of November 2004, the Department issued FY 2005-10, Refund Claims for RAR Liabilities Paid Under Amnesty. Stipulation of Facts Exhibit D is a true, genuine and accurate copy of said document. Stip. ¶18.
19. On November 29, 2004, ABC, pursuant to Illinois Income Tax Act section 506 (b), placed, in the mail, a second amended return for the tax year ended 12/31/97 ("Second Amended Return") reporting the IRS's final changes and seeking a refund of tax in the amount of \$43,372. Stip. ¶19.
20. The Second Amended Return was received by the Department on December 20, 2004. Stip. ¶20.
21. Stipulation of Facts Exhibit E is a true, genuine and accurate copy of ABC's Second Amended Return. Stip. ¶21.
22. On February 27, 2007, the Department issued its Notice of Denial ("Notice") denying in its entirety, the refund sought by ABC on its Second Amended Return. Stip. ¶22.
23. Stipulation of Facts Exhibit F is a true, genuine and accurate copy of the Department's Notice. Stip. ¶23.
24. The Department's Notice stated that the claim was being denied because "[f]or the taxable year ended December 31, 1997, the Department holds that your claim for refund was not filed timely. [35 ILCS 5/911(b)(1)]." Stip. ¶24.

25. On April 20, 2007, ABC timely filed its Protest and Request for Hearing in response to the Department's Notice. Stip. ¶25.

Conclusions of Law:

The Illinois Tax Delinquency Amnesty Act of 2003, P.A. 93-0026 (SB 969) (hereinafter the “Act”), authorized an amnesty program that provided taxpayers the opportunity to pay outstanding tax liabilities for the years 1983-2002 and to have penalties and interest for taxes paid during the amnesty period forgiven. In exchange for payment of all unpaid taxes pursuant to amnesty, interest and penalties on such taxes were abated. 35 **ILCS** 745/10.

The amnesty program applied to payments in full and final satisfaction of contested and uncontested tax liabilities received by the Department from October 1, 2003 through November 17, 2003. *Id.* The amnesty program was voluntary. 86 Ill. Admin. Code, ch. I, section 521.105(b). Taxpayers participated in the amnesty program by sending payments to the Department accompanied by the appropriate returns, forms and schedules specifying the tax liabilities and tax periods to which amnesty payments pertained. *Id.*

The Act states in part as follows: “The amnesty program shall be for a period from October 1, 2003 through November 15, 2003.”¹ Taxpayers failing to make amnesty payments during this period were ineligible to receive tax amnesty relief from penalties and interest. Moreover, eligible taxpayers who owed taxes for any taxable period ending after June 30, 1983 and prior to January 1, 2002 that failed to pay all taxes

¹ The Tax Amnesty Program ended November 17, 2003 because November 15, 2003, the date for the conclusion of the program specified in the Act, was a Saturday. 5 **ILCS** 70/1.11; 86 Ill. Admin. Code, ch. I, section 521.101.

due and owing during the tax amnesty period were subject to interest and penalties at double the statutory rate on all amounts remaining unpaid as of November 18, 2003. 35 **ILCS** 735/3-2(f) (double interest); 35 **ILCS** 735/3-3 (i) (double penalties). Taxpayers under Federal audit of tax periods eligible for amnesty were required to file amended returns and report Federal changes that had not become final during the amnesty program in order to avoid the doubling of penalties and interest. 86 Ill. Admin. Code, ch. I, section 521.105(j), (k), (l).

Prior to the commencement of the amnesty period noted above, the Internal Revenue Service commenced an audit of the taxpayer's Federal income tax return for the tax year 1997. Stip. ¶9. With respect to taxpayers under Federal audit during the period amnesty payments were required, emergency regulations enacted to implement the Act and its tax amnesty program, at 86 Ill. Admin. Code, ch. I, section 521.105 ("regulation 521.105"), provide as follows:

- (k) **Underpayment and Overpayment of Tax Due.** Taxpayers, including taxpayers under audit during the Tax Amnesty Program Period, who are unsure of the exact amount of a tax liability should make a good faith estimate of the amount of the liability ... The Department may in its discretion refund overpayments of tax that were caused by computational error. All other overpayments will be credited to the taxpayer. ...
 - 1) A taxpayer who is under federal audit may participate in the Tax Amnesty Program by following the procedure set out in subsection (k) above and making a good faith estimate of the increased liability that may be owed to the Department. For purposes of participating in the Amnesty Program only, a taxpayer may file an amended return reporting a federal change prior to receiving final notification from the Internal Revenue Service that the change has occurred. Although participants in the Amnesty Program may not seek or claim refunds, a limited exception to this rule will be permitted for taxpayers whose refund claims are based upon final

determinations by the Internal Revenue Service or the federal courts.

86 Ill. Admin. Code, ch. I, section 521.105(k)

On November 17, 2003, the taxpayer elected to participate in the Illinois tax amnesty program authorized by the Act by making an amnesty payment and filing appropriate forms and schedules including a form IL-1120-X Amended Return for the tax year 1997. Stip. ¶¶ 11 – 15. Since the Federal audit of the taxpayer's 1997 return was still in progress during the period the taxpayer's tax amnesty payment was required to be made, the taxpayer made a good faith estimate of its probable liability pursuant to regulation 521.105(k). Based upon this good faith estimate, it reported Federal taxable income of \$148,170,752, Illinois income tax liability for 1997 of \$349,324 and an additional \$100,670 in Illinois income tax due the Department for 1997 that had not previously been paid as a result of the anticipated Federal changes it reported. It tendered a check to the Department in this amount along with a form 1120-X Amended Return amending its timely filed return for calendar year 1997. *Id.*; Stip. Ex. B.

Subsequently, on or about August 18, 2004, the taxpayer was advised of its Federal income tax liability as finally determined by the IRS at the conclusion of its audit of the taxpayer's 1997 Federal income tax return. Stip. ¶16. The taxpayer's Federal taxable income for 1997 was finally determined by the IRS to be \$130,596,080, and its Illinois income tax liability for 1997 based on this final Federal change was \$305,952. Stip. Ex. E. This amount was less than the amount of the taxpayer's good faith estimate of its Federal taxable income reflected on its IL-1120-X filed in November 2003 during the amnesty period, and resulted in an Illinois income tax liability that was \$43,372 less than the amount paid to Illinois with the taxpayer's IL-1120-X on November 17, 2003

pursuant to the amnesty program. *Id.* Accordingly, on November 29, 2004, the taxpayer filed another IL-1120-X claiming a refund due in the amount of the difference between its good faith estimate of its Illinois income tax liability and its liability based upon the amount of its Federal taxable income as finally determined by the IRS. Stip. ¶19. This IL-1120-X also was filed pursuant to 35 ILCS 5/506(b) which required the taxpayer to report final Federal changes to the Department. *Id.* On February 27, 2007, the Illinois Department of Revenue issued a Notice of Denial denying in its entirety the taxpayer's refund claim stating that "your claim for refund was not filed timely." Stip. ¶¶22-24; Stip. Ex. F.

Section 5/911(a) of the Illinois Income Tax Act, 35 ILCS 5/911(a) reads as follows:

(a) In general. Except as otherwise provided by this Act:

- 1) A claim for refund shall be filed not later than 3 years after the date the return was filed (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), or one year after the date the tax was paid, whichever is the later; and
- 2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period.

35 ILCS 5/911(a)

The taxpayer's IL-1120-X seeking a refund of the tax overpayment made by the taxpayer was filed on November 29, 2004. Stip. ¶19. The taxpayer timely filed its Illinois corporate income and replacement tax return for 1997 on November 11, 1998.²

² On September 14, 2000, ABC filed a 1997 form IL-1120-X, Illinois Amended Corporate Income and Replacement Tax Return, increasing its Federal taxable income as reported on its Illinois return filed on November 11, 1998. Taxpayer's Brief p. 5.

Taxpayer's Brief p. 5. This date was more than three years before the date on which its form IL-1120-X amended return seeking a refund of tax for 1997 was filed (November 29, 2004).

The Illinois income tax determined by the taxpayer to be due on its IL-1120-X filed in order to participate in the amnesty program was paid on November 17, 2003. Stip. ¶¶ 11-15; Stip. Ex. E. Since its refund claim seeking a refund of a portion of the amount of tax paid on November 17, 2003 was filed on November 29, 2004, the date of this payment was more than one year prior to the date on which the taxpayer's refund claim was filed. Accordingly, since the taxpayer's refund claim was filed neither within three years from the date the taxpayer's return was filed nor within one year of the date tax sought to be refunded was paid as required by 35 **ILCS** 5/911(a), evidence contained in the record fully supports the Department's determination that the taxpayer's refund claim was beyond the statute of limitations as prescribed by 35 **ILCS** 5/911(a) noted above.

However, the taxpayer contends that its refund claim filed on November 29, 2004 was not governed by the statute of limitations prescribed by section 911(a) of the Illinois Income Tax Act, but, rather was governed by a different statute of limitations rule applicable in special situations involving taxpayers under Federal audit. Taxpayer's Brief pp. 11-14. This special statute of limitations is prescribed by section 911(b) of the Illinois Income Tax Act which provides as follows:

(b) Federal changes.

- 1) In general.** In any case where notification of an alteration is required by Section 506(b), a claim for

refund may be filed within 2 years after the date on which such notification was due (regardless of whether such notice was given), but the amount recoverable pursuant to a claim filed under this Section shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported.

35 ILCS 5/911(b)

The taxpayer was notified of final Federal changes on or about August 18, 2004 and executed a Federal form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overpayment agreeing to the Federal changes determined by the IRS on that date. Stip. ¶16; Stip. Ex. C. As noted above, it subsequently filed a form IL-1120-X reporting final Federal changes and seeking a refund on November 29, 2004. Stip. ¶19. Since this period was well within the limitations period prescribed by 35 ILCS 5/911(b) (two years plus 120 days from the date on which the Federal change was finalized), the taxpayer claims that its refund claim seeking amounts paid on November 17, 2003 in excess of Illinois tax ultimately determined to be due pursuant to the IRS Federal change the taxpayer reported on November 29, 2004, was not time barred.

However, as noted by the Department, there is an important limitation upon the application of the statute of limitations prescribed by section 5/911(b). The amount recoverable where a claim is filed within this statute of limitations is limited to “the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect

to the item or items reflected in the alteration required to be reported.” 35 ILCS 5/911(b). Pursuant to the foregoing, taxpayers seeking refunds based upon Federal changes that are not time barred by virtue of section 911(b) can recover only Illinois income tax overpayments determined by recomputation of the taxpayer’s Illinois net income “after giving effect to [Federal change items] ... required to be reported” by Illinois law. Federal changes or “alterations required to be reported” are prescribed by section 506(b) of the Illinois Income Tax Act which provides as follows:

(b) Changes affecting federal income tax. A person shall

notify the Department if:

- 1) the taxable income, any item of income or deduction, the income tax liability, or any tax credit reported in a federal income tax return of that person for any year is altered by amendment of such return or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alternation reflects a change or settlement with respect to any item or items, affecting the computation of such person’s net income, net loss, or of any credit provided by Article 2 of this Act for any year under this Act, or in the number of personal exemptions allowable to such person under Section 151 of the Internal Revenue Code, or
- 2) the amount of tax required to be withheld by that person from compensation paid to employees required to be reported by that person on a federal return is altered by amendment of the return or by any other recomputation or redetermination that is agreed to or finally determined on or after January 1, 2003, and the alteration affects the amount of compensation subject to withholding by that person under Section 701 of this Act. Such notification shall be in the form of an amended return or such other form as the Department may by regulation prescribe, and shall be signed by such person or his duly authorized representative,

and shall be filed not later than 120 days after such alteration has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, tentative carryback adjustment, abatement or credit resulting therefrom has been assessed or paid, whichever shall first occur. (emphasis added)
35 ILCS 5/506

Pursuant to the foregoing, a taxpayer is required to report only alterations to Federal taxable income that have been either agreed to or finally determined by the IRS since no report pursuant to this section can be filed before such finalization of Federal liability occurs.

The taxpayer claims that the refund it seeks is not precluded by the aforementioned limitation on the amount that can be refunded by virtue of a final Federal change, arguing as follows:

Section 911(b)(1) of the Illinois Income Tax Act (“IITA”) sets forth a special statute of limitations for refund claims based on federal changes (the “Federal Change SOL for Refunds”) ... [.]

In its Response Brief, the Department has interpreted the Federal Change SOL for Refunds to bar Taxpayer’s refund on the basis that “refunds allowed under that provision are limited to the overpayment that results from the IRS adjustments, and in this case the IRS adjustment caused an increase in taxpayer’s tax so that no refund may be allowed under this provision.” (Dept’s br. 2). However, contrary to what the Department has suggested, IITA Section 911(b)(1) does allow for Taxpayer’s Illinois tax refund, even though the IRS increased Taxpayer’s federal tax amount due. (See Stip. Ex. C).

IITA Section 911(b), when analyzed closely, requires the following four-step process:

- 1) identify the federal alteration required to be reported;
- 2) identify the item or items reflected in the alteration that impacts the taxpayers’ Illinois tax liability;
- 3) recompute the taxpayer’s net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported (the “Recomputation of Illinois Tax”); and

- 4) limit the amount of any Illinois refund to the amount of the overpayment resulting from the recomputation of Illinois Tax.

Applying this four-step process to Taxpayer's situation results in an Illinois refund, as follows:

- 1) the federal alteration required to be reported is the IRS' increase in Taxpayer's federal tax. (See Stip. Ex. C);
- 2) the item(s) reflected in the alteration that impacts Taxpayer's federal taxable income as corrected is \$130,596,080. See Stip. Ex. E (Form IL-1120-X, Part I, line 1);
- 3) Taxpayer's Illinois net income and Article 2 credits are impacted as a result of Taxpayer's federal taxable income being corrected to be \$130,596,080. See Stip. Ex. E (Form IL-1120-X, Part I, lines 1, 12). Taxpayer's Illinois net income and replacement tax is now \$305,952 after recomputing Taxpayer's Illinois net income and Article 2 credits. See Stip. Ex. E (Form IL-1120-X, Part I, line 15);
- 4) the Illinois refund resulting from the Recomputation of Illinois Tax is \$43,372. See Stip. Exh. E (Form 1120-X, Part II, line 8).

Taxpayer's Reply Brief pp. 1, 2

The taxpayer reported Federal taxable income in the amount of \$106,907,732 on its timely filed federal income tax return for 1997 and reported additional Federal taxable income of \$67,571 increasing Federal taxable income to \$106,975,303 prior to September 14, 2000. Taxpayer's Brief p. 5. The IRS audited the taxpayer's 1997 return and amended return filed prior to September 14, 2000 and determined that its taxable income for 1997 was \$130,590,080. Taxpayer's Brief p. 6. Thus the only amount of additional income resulting from the IRS audit of the taxpayer was \$23,620,777, the difference between the amount reported to the IRS on the taxpayer's 1997 return as originally filed and amended prior to September 14, 2000 and the amount of the taxpayer's finally determined Federal income tax liability which was agreed to by the taxpayer on August

18, 2004. Stip. ¶¶ 16-19; Stip. Ex. E.³ Consequently this amount is the total amount of additional Federal taxable income arising from the adjustments and computations the IRS finally determined. *Id.*

Federal taxable income of \$148,170,752, an amount greatly exceeding the amount of Federal taxable income finally determined by the IRS (\$130,590,080) was reported by the taxpayer on its form IL-1120-X for 1997 filed on November 17, 2003. See Stip. Ex. B. The additional amounts reported and paid by the taxpayer with its November 17, 2003 return arose not from IRS adjustments but, rather, from an amount determined by the taxpayer based upon its estimate of adjustments and computations it anticipated the IRS would make. None of these adjustments and computations was ever actually made by the IRS.

Because the amount of Federal taxable income in excess of \$130,590,080 reported by the taxpayer on its amended return filed November 17, 2003 was more than the amount of its Federal taxable income as finally determined by the IRS, the amount in excess of \$130,590,080 the taxpayer reported was not “an amount required to be reported” as a final Federal change made by the IRS pursuant to section 506(b) of the Illinois Income Tax Act. Rather, the amount of the Federal change required to be reported pursuant to this section was the amount reported by the taxpayer on its November 29, 2004 return which the taxpayer admits was the report the taxpayer was required to file by section 506(b). Stip. ¶19. Since the amount exceeding \$130,590,080 reported on the taxpayer’s amended return filed on November 17, 2003 was more than

³ The amount of additional Federal taxable income reported on the taxpayer’s November 2003 IL-1120-X when compared to the tax originally reported by the taxpayer on its return filed in 1998 as amended in 2000 was \$41,195,449. Stip. Ex. B.

the amount of additional tax finally determined by the IRS, the amount of federal taxable income reported by the taxpayer on its November 2003 IL-1120-X was more than the amount the taxpayer was required to report as Federal changes pursuant to section 506(b). Thus, the amount of additional Illinois income tax shown on the taxpayer's November 2003 IL-1120-X and paid by the taxpayer was based on additional Federal taxable income not "required to be reported" pursuant to section 506(b). Consequently, it exceeds the limitation on refundable amounts set forth in section 911(b) which limits refunds to amounts required to be reported by Section 506(b). This is true because, as a consequence of section 506(b) refunds are limited to amounts of additional Illinois tax resulting from final Federal changes determined by the IRS that have been "agreed to" or "finally determined" and does not encompass Illinois net income based on changes to Federal taxable income as originally reported that are mere estimates of additional Federal taxable income made by the taxpayer. In sum, while the taxpayer's amended return claiming a refund based upon Federal changes was filed within the limitations period set forth in section 911(b), the amount sought by the taxpayer as a refund exceeds the limitation on allowable refunds contained in that section.⁴

Despite the clear and unambiguous language in 35 ILCS 5/911(b) limiting refunds to overpayments resulting from actual Federal changes, the taxpayer contends that settled rules of statutory construction dictate that this provision be interpreted in a

⁴ The taxpayer seeks to rely upon regulation 521.105(k) which states in part as follows: "The Department may in its discretion refund overpayments of tax that was caused by computational error. All other overpayments will be credited to the taxpayer." As the taxpayer (at Taxpayer's Brief p. 5) correctly points out, pursuant to this regulation the Department is required to credit to the taxpayer all payments arising from refund claims based upon "final determinations of the Internal Revenue Service or the federal courts." However, for the reasons set forth herein, this regulation is inapplicable to the taxpayer's refund claim because the amount of the refund sought by the taxpayer exceeds the Internal Revenue Service's final determination of the taxpayer's tax liability.

manner that supports the taxpayer's claim. Taxpayer's Brief pp. 16, 17. The rule of statutory construction the taxpayer contends must be applied in this case is section 5/102 of the Illinois Income Tax Act, 35 **ILCS** 5/102, which provides as follows:

§ 102. Construction. Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.
35 **ILCS** 5/102

Based on this rule of statutory construction, the taxpayer reasons as follows:

Illinois' tax laws regarding the statute of limitations for refund claims are modeled after similar provisions in the Internal Revenue Code (the "Code"). Compare IITA § 911 and IRC §6511. Because Illinois' refund claim laws are nearly identical to the refund claim laws in the Code, Illinois' refund claim laws are interpreted in the same manner as those under the federal law. See 35 ILCS 5/102; see also Ill. Private Letter Ruling 99-IT-0006 (July 30, 1999). Indeed, in Private Letter Ruling 99-0006, the Department acknowledged the similarity of the refund claim laws under Illinois and federal tax law and found that Illinois' refund claim laws are to be interpreted in a manner similar to the federal refund claim laws.

Pursuant to federal law, the filing of a supplemental refund claim after the statute of limitations has expired may be considered a timely amendment to the taxpayer's timely amended return – rather than an untimely new claim. See IRS Letter Ruling No. 199941039 (August 23, 1999). ...

Because Illinois' income tax laws parallel federal tax laws regarding refund claims, Illinois law, like federal law, also allows for supplemental claims to relate back to timely amended returns.

In the present matter, ABC's Second Amended Return was a timely supplemental claim that relates back to its First Amended Return and, as such, is not a new claim. For a refund claim to be an amendment to an original timely-filed amended return, (1) the amendment must be 'germane' to the original claim and (2) must be presented before the original claim has been resolved. See *Crompton v. United States*, No. 01-182T, 2003 U.S. Claims, LEXIS 211 [92 AFTR 2d 2003 – 5625] (Fed. Cl. July 8, 2003). Both of those requirements are met here.

A new ground is “germane” if an “amendment ... merely makes more definite the matter already within [the government’s] knowledge, or which, in the course of [the government’s] investigation [the government] would have normally ascertained ...” *United States v. Andrews*, 302 U.S. 517 (1938). The basis for ABC’s First Amended Return was to adjust its anticipated federal changes to actual. As such, the basis for ABC’s Second Amended Return was “germane” to ABC’s timely-filed First Amended Return.

Further, ABC’s Second Amended Return supplements and amends its First Amended Return by reason of satisfying the requirement that it be filed before the claim to which it relates back has been resolved. In this case, the First Amended Return, the tax return to which the Second Amended Return relates back, was not finally “resolved” prior to ABC’s filing of final RAR changes with the Department, which allowed the Department to adjust ABC’s federal taxable income amount to actual.

Based on the foregoing authorities, ABC’s Second Amended Return relates back and supplements ABC’s First Amended Return and, therefore, it is a timely amendment of the ABC’s First Amended Return, rather than an untimely new amended return.

Taxpayer’s Brief pp. 16, 17

As pointed out by the Department, the taxpayer’s argument is premised upon a factual error. Department Brief p. 11. It assumes that the taxpayer’s amended return filed on November 17, 2003 was a refund claim rather than a report of additional income tax due. *Id.* However the return filed on November 17, 2003 made no claim that any overpayment of tax was made on the taxpayer’s original return but, instead, reported additional taxes that were due and owing to the state. Stip. Ex. B. Moreover, the statute of limitations provision upon which the taxpayer seeks to rely is section 911(b). The limitations period prescribed by this section commences only when a Federal change has been finalized. At the time the taxpayer filed its IL-1120-X in November 2003 no Federal change had been finalized that would accord the taxpayer leave to rely upon the special statute of limitations applicable to Federal changes prescribed at section 911(b). Consequently, even if the taxpayer’s November 17, 2003 IL-1120-X were treated as a

refund claim and the taxpayer's filing on November 29, 2004 treated as an amendment to this claim, neither would constitute a claim for refund under section 911(b).

The Illinois appellate court has held that the Illinois Income Tax Act incorporates Federal concepts. Bodine Electric v. Allphin, 70 Ill. App. 3d 844 (1st Dist. 1979). However, this rule of statutory construction is applicable only where Federal income tax terms and concepts being applied in Illinois are used in a "comparable context" in the Internal Revenue Code. 35 ILCS 5/102. Section 911(a) of the Illinois Income Tax Act, 35 ILCS 5/911(a), closely parallels section 6511 of the IRC, and appears to be modeled upon this Federal income tax provision. Compare section 911(a) quoted above and IRC section 6511.⁵ However, as noted above, the statute of limitations provision being relied upon by the taxpayer is not section 911(a) of the Illinois Income Tax Act but, rather, is section 911(b). As pointed out by the Department, section 911(b) has no Federal counterpart in the IRC. See Department's Brief p. 11. As noted by the Department in its brief "[The] IRC does not have a subsection dealing with the exception when Taxpayer has settled or resolved an income tax dispute with a higher authority, it does not have a subsection similar to IITA Sec. 911(b)". *Id.* Since section 911(b) has no Federal income tax counterpart, the terminology used in this section has no counterpart in any provision of the IRC. Since reliance upon Federal authority is authorized by section 102 of the Illinois Income Tax Act only when a comparable Federal income tax provision exists, the

⁵ IRC section 6511(a) provides in part as follows: "Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid." 26 USCA § 6511.

rule of statutory construction upon which the taxpayer seeks to rely is not applicable in this case.

Moreover, the first rule of statutory construction is that where the language of a statute is clear, the court must apply its plain meaning as written. Connecticut National Bank v. Germain, 503 U.S. 249, 254 (1992). “Where the words of a statute are unambiguous, this first canon is also the last: ‘judicial inquiry is complete.’ ” (quoting Rubin v. United States, 449 U.S. 424 (1981)). Following the aforementioned cardinal rule, I look to the terms used in section 911(b) applying to these terms their plain and ordinary meaning. As noted above, the amount of refund recoverable where the statute of limitations provision set forth at 911(b) is applicable cannot exceed the amount reportable pursuant to section 506(b) of the Illinois Income Tax Act, 35 **ILCS** 5/506(b). Section 506(b) plainly limits the recoverable amounts to overpayments of Illinois income tax resulting from final determinations of Federal taxable income by the IRS. Although reliance upon Federal law can be made where a governing legislative mandate is silent or ambiguous, in this case the scope and limitations of section 911(b) are plainly laid out in this statute. Accordingly, the cardinal rule of statutory construction applies here. Since the plain meaning of the statute is clear and unambiguous, there is no need to look to the Federal law for further interpretation by applying the rule of statutory construction set forth at 35 **ILCS** 5/102.

The taxpayer also seeks to rely upon 86 Ill. Admin. Code, ch. I, section 521.105(k) which provides in part as follows: “The Department may in its discretion refund overpayments of tax that were caused by computational error. All other overpayments will be credited to the taxpayer.” The applicability of this provision is

limited to situations involving mathematical or “computational” errors. The term “mathematical error” is defined at 35 **ILCS** 5/1501(a)(12) to encompass (a) arithmetic errors or incorrect computations on the return or supporting schedules; (B) entries on the wrong line; (C) omission of required supporting forms or schedules or the omission of the information in whole or in part called for thereon; or (D) an attempt to claim, exclude, deduct, or improperly report, in a manner directly contrary to the provisions of the Act and regulations thereunder any item of income, exemption, deduction, or credit. See also Department of Revenue v. Walsh, 196 Ill. App. 3d 772 (1st Dist. 1990).

The amounts shown to be due on the taxpayer’s amended return filed on November 17, 2003 along with its amnesty tax payment do not fall within any of these parameters. As noted above, the Department’s Amnesty Tax Regulations, at 86 Ill. Admin. Code, ch. I, section 521.105(k), states that a taxpayer that is the subject of a Federal audit wishing to take advantage of amnesty by making an amnesty payment during the period when such payments may be made, can make a “good faith estimate” of its Federal income tax liability. The taxpayer availed itself of this provision, having determined its Illinois tax liability to be \$100,670 on its IL-1120-X filed with its amnesty payment on November 17, 2003. The record does not indicate that the taxpayer’s return entry was the result of an error or omission of any kind. Nor was the taxpayer’s return entry undertaken in contravention of any Department regulation, the amount paid having been determined as a “good faith estimate” and reported in full compliance with the requirements of regulation 521.105(k). Given these facts, it is difficult to characterize the entry on the taxpayer’s November 17, 2003 IL-1120-X and the amount paid in accordance therewith as an error of any kind. Consequently, the provisions of section

521.105(k) upon which the taxpayer seeks to rely are not applicable to the taxpayer's alleged overpayment reported on and made pursuant to its IL-1120-X filed on November 17, 2003.

Moreover, even if the amounts reported on the taxpayer's November 17, 2003 IL-1120-X were the result of a computational or mathematical error, the Department's regulation 521.105(k) gives the Department unfettered discretion to decide when to exercise its authority to grant refunds when it determines that a computational error has been made. The Department has indicated that it had a reasonable basis for deciding not to exercise its discretion pursuant to regulation 521.105(k) by granting the taxpayer a refund, namely its determination that any such refund was statutorily barred by section 911(a) and section 911(b) of the Illinois Income Tax Act. Department's Brief p. 10 ("[E]ven if the Taxpayer's assertion that its liability shown on its First Amended Return was overstated as a result of a computational error, no refund of that overstated amount could be allowed in this case because no timely refund claim was filed."). In order to prevail, the taxpayer must, at a minimum, show that the Department's interpretation of sections 911(a) and 911(b) of the Illinois Income Tax Act to preclude any refund was incorrect. Accordingly, the merits of the taxpayer's claim based upon regulation 521.105(k) is contingent upon a determination that the taxpayer's refund claim was not barred by the statute of limitations provisions contained in the Illinois Income Tax Act. For the reasons enumerated earlier herein, I do not agree with the taxpayer's contentions regarding this issue.

Finally, the taxpayer contends that regulation 521.105(c) creates a special statute of limitations for refund claims resulting from the overpayment of taxes paid pursuant to

the state's tax amnesty program. Taxpayer's Brief pp. 18, 19. The taxpayer further contends that it reasonably relied upon this special statute of limitations when it elected to participate in the state's 2003 amnesty program by filing an IL-1120-X and paying tax based upon its good faith estimate of liability. *Id.* The amnesty program essentially barred all refund claims except those resulting from Federal and state audit changes to the taxpayer's tax liability after the tax amnesty program was concluded. 86 Ill. Admin. Code, ch. I, section 521.105(l). The language relied upon by the taxpayer states as follows:

Although participants in the Amnesty Program may not seek or claim refunds, a limited exception to this rule will be permitted for taxpayers whose refund claims are based upon final determinations of the Internal Revenue Service or the federal courts.

Id.

The clear import of the foregoing provision is to provide an exception to the general rule that tax amnesty payments are not refundable. While this provision is silent as to the period within which such refund claims must be filed, section 521.105(m) makes it clear that the limitation period for filing such claims is the statutorily prescribed refund claim limitations period ordinarily applicable to refund claims, providing as follows:

m) Statute of Limitations and Other Filing Periods. Participation in the Amnesty Program does not toll any applicable statute of limitations or other time period for the filing of protest with the Department, or actions in circuit court under the Protest Monies Act [30 ILCS 230]. A statute of limitations or other time period that expires during the Amnesty Program Period cannot be revived, even if the taxpayer has

failed to satisfy all of the requirements of the Amnesty Program. The Department's procedures for obtaining waivers of statutes of limitations for taxpayers under audit shall continue to apply.

86 Ill. Admin. Code, ch. I, section 521.105

The clear import of section 521.105(l) read in tandem with section 521.105(m) is to entitle a taxpayer who submits an amnesty application and pays delinquent tax based upon an estimate of its Federal tax liability to file a refund claim for any overpayment resulting from a reportable Federal change within the applicable limitations periods set forth in the state's refund claim statutes. Regulation 521.105(m) makes it clear that a refund must be statutorily refundable for any such refund rights to overpayments to attach by virtue of the Department's amnesty regulations. This conclusion is punctuated by Illinois Department of Revenue Information Bulletin No. FY 2005-10 issued 11/1/04. This information bulletin makes it clear in no uncertain terms that refund claims arising from participation in the Amnesty Program that are barred by any statute of limitations provision contained in the Illinois Income Tax Act will not be granted, stating as follows:

How are the statute of limitations and extensions affected by the amnesty program?

The rules for the amnesty program do not make exceptions for the existing rules. Any taxpayer that paid a liability under the amnesty program is eligible to file a claim for refund within the limitations of the IITA. (emphasis added)⁶

⁶ The taxpayer, in its reply brief, argues that the language of regulation section 521.105(m) is ambiguous contending that this regulation only pertains to the statute of limitations for filing protests and actions under the Protest Monies Act. Taxpayer's Reply Brief pp. 5, 6. The taxpayer's basis for this claim is the wording of the first sentence of regulation 521.105(m) which states as follows: "Participation in the Amnesty Program does not toll any applicable statute of limitations or other time period for the filing of protests with the Department, or actions in circuit court under the Protest Monies Act." However, the terms "statute of limitations" and "other time periods" are in the disjunctive rather than the conjunctive, indicating that the Department intended "statute of limitations" to refer to one statutory category and "other time periods" to refer to another. G.S. Lyon & Sons Lumber and Manufacturing Company v. Department of Revenue, 23 Ill. 2d 180, 183 (1961). Moreover, the proper construction of this regulation is confirmed by the plain and unambiguous language used in the Department's Revenue Information Bulletin No. FY 2005-10.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's denial of the taxpayers' claim for refund for the tax year 1997 be upheld.

Ted Sherrod
Administrative Law Judge

Date: March 12, 2008